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09/329,209	06/10/1999	DAVID LIU	CAR-99-006	7815

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 12

Application Number: 09/329,209
Filing Date: June 10, 1999
Appellant(s): LIU ET AL.

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 7, 2003.

Serial Number: 09/329,209
Art Unit : 2315

This examiner's answer is in response to the appellant's Appeal Brief filed May 17, 2003 (paper #11).

I. Real Party in Interest

A statement identifying the real party in interest is contained in the brief and is acknowledged.

II. Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief and is acknowledged.

III. Status of Claims

This is an Answer to an appeal from the final rejection of claims 1-3, 5-10, 12-16, 18-25, and 27-33, which are all the claims in the case. Examiner agrees with the statement of the status of the claims contained in the appellant's brief.

IV. Status of Amendments After Final

Examiner agrees with the statement of the status of amendments contained in the appellant's brief.

V. Summary of Invention

Examiner agrees with the summary of the invention contained in the appellant's brief.

VI. Issues

Examiner disagrees with the issues presented for review as contained in the appellant's brief. Claims 1-3, 5-10, 12-16, 18-25, and 27-33 are rejected only as anticipated under 35 U.S.C. 102 by Kracht (US 6,377,987). The "rare finding" was never a rejection, per se, but rather a discussion of known practices in the art of Network Discovery.

VII. Grouping of Claims

Examiner agrees with the grouping of the claims as contained in the appellant's brief.

VIII. Claims Appealed

Examiner agrees that the copy of the appealed claims as contained in the appendix of the appellant's brief is correct.

IX. References of Record

The following is a listing of the references of record relied upon for establishing the rejection under 35 U.S.C. 103:

U.S. Patent 6,377,987 Kracht filed April 30, 1999.

X. Grounds of Rejection

1. Claims 1-3, 5-10, 12-16, 18-25, and 27-33 stand rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kracht (US 6,377,987 B1).

2. Per claim 8, Kracht taught a network (eg., see Title) comprising:

a) a management station (eg., see col. 1 (lines 35-49)) configured to output a first command (eg., see col. 7 (lines 14-25 and/or 35-50)) from a plurality of commands ("ping" is a command indicated in col. 7 (line 20) and SNMP commands in col. 7 (line 33)) to a managed device (col. 1 (line 36) states "managed" and what is managed are the "devices" on line 39 of col. 1) to identify the managed device, wherein the management station selectively outputs a second command (eg., see col. 7 (line 56-et seq.) and col. 10 (lines 29-55)) from the plurality of commands to the managed device if the first command does not provide unique identification of the managed device, the second command being different from the first command.

3. Per claim 8, in view of the Appellant's Summary on page 3 (line 12-et seq.) with reference to the Appellant's fourth figure, if a response to an applied initial or subsequent command is received, a processor compares the command and received response with device type data within a device table in an attempt to match the command and response with a device type. With respect to Kracht, such is also the case in col 7 (lines

50-67)). Also, per the Appellant's Summary on page 4 (lines 4-14), if the device response with a partial response (ie., the --prefix-- "%.cisco.%H, the processor uses that response to "ascertain" (determine) the device type belonging to device group types Cisco(R) 4500 or Cisco(R) 7000 and issues a subsequent command which indicates (individually corresponds to) the "group" of device types. This too was taught by Kracht in col. 8 (lines 1-11) where this system uses a --prefix-- in the returned response to determine "ascertain" the device type as a Cisco belong to a specific group hub, router, or switch. Subsequently more commands are issued. For example, if the partial response is determined that the device belongs to the group "hub" additional information is requested by the system as taught in col. 10 (lines 19-21 and then lines 43-55)). Thus not only does Kracht read on claim 8 within that claim's scope, but also within the scope of the Appellant's Summary.

4. Per claims 9 and 10 see col. 6 (line 47) for SNMP and col. 7 (line 17 "Internet") for TCP/IP commonly used on the Internet. While ICMP is not TCP/IP, there is reference to the use of the Internet which uses TCP/IP over which SNMP is communicated. Thus TCP/IP is inherently taught by Kracht such as in col. 2 (line 32 "IP address).

5. Per claim 12 see col. 8 (lines 1-11) where "cannot" indicates a failure to provide a full and complete response (ie., only provides a prefix or partial response). As covered by the Appellant's summary, as indicated above, a failed response is one that only provides partial identification from the device such as "%.cisco.%H.

6. Per claims 13 and 14, see col. 7 (line 35-et seq.) "MIB" and also lines 55-59 of col. 7 . Also see col. 10 (lines 19-55) for issuing commands individually corresponding to a device type (such as hub, routers, or switches).

7. Per the other claims not specifically mentioned, they do not teach or define above the correspondingly rejected claims and are thus also rejected for the reasons outline above.

XI. Response to Argument

1. The Appellant argued in substance:

A) the examiner's legal burden. However, based on the above given, examiner has established a prima faci basis to deny patentablity to all claims of the claimed invention under the statutory provision of 35 U.S.C. 102(e) as indicated above. Specifically, col. 8 (lines 1-11) of Kracht directly taught a

prefix variable was used to determine whether the device is a "Cisco" device. If so, the discovery mechanism uses the MIB sysServices value to determine ("ascertain") the device type which is similar to the argument presented by the Appellant in his Brief on page 4 (lines 5-7). Since the device in now known as a generic hub, router, or switch the discovery mechanism requests additional configuration information, via a subsequent or second command different then from the first, that is specific to each type of known devices (eg., see col. 10 (lines 19-21)) of Kracht. Thus, the applied prior art functioned in accordance with, or included, the claimed limitations and is thus anticipated (In re Schreiber, 128 F.3d 1473, 1477,44 USPQ 2d 1429, 1431 (Fed. Cir. 1997);

B) the claims are not anticipated over Kracht, because Kracht fails to disclose transmitting subsequent commands that are different from the prior command. However, as indicated above, two commands are issued;

C) claims 7, 14, 20 and 30 are not anticipated over Kracht, because Kracht fails to disclose the applied management commands individually correspond to respective device types of the identified managed deices. However, such has been addressed above with respect to col. 10 (line 18-et seq.). For example, in

col. 10 (lines 43 "Likewise, for each hub, the discovery mechanism send SNMP request to the device's agent" and the same for type router in col. 10 (line 28) and type switch in col. 10 (lines 35-36);

D) claims 15, 23, and 33 are not anticipated over Kracht, because Kracht fails to disclose an asset table containing the identified managed deices. However, such claims did not teach or define correspondingly rejected claim 13 provided above as shown to have been taught in col. 7 (lines 56-67) of Kracht. If the Appellant is now suggesting a narrow scope of the claims (ie., once the device is known, related identification information is stored), once the system of Kracht discovered a device and it's type, such information inherently was stored for latter recall. Else, the system would identify the device and then instantly forget such information unless such information was stored. Figure 7 (element 746 in element 732) provides a display of such a table. That is, when a device is discovered and it's type learned, it is stored for latter usage. Figure 8 provides another visual representation of an asset table. Also such was covered in col. 2 (lines 30-38). In all, the claims do read on using the information in a response with entires in a table to obtain device type which is how claim 13 reads. Claim 33, simply

states storing the device type information in the table based on the determined device type. That's inherent. If, in col. 7 (lines 56-67), the response is compared to a set of known values to identify the device type, the set of known values (device type information) had to be stored for each determined device type else the table would be void;

E) claim 19 is not anticipated over Kracht, Because Kracht fails to disclose computer usable data including a state transition table including a plurality of identifiers, such was mentioned above with respect to col. 7 (lines 56-67) which does not teach or define above the claims addressed (eg. claim 13) and thus was rejected on the same ground provided for claim 13;

F) claim 21 is not anticipated over Kracht, because Kracht fails to disclose a node table comprising a plurality of node locations for respective managed devices. However, such was clearly shown in figure 8 as covered in col. 14 starting with line 36. Examiner need not specifically point to a figure that jumps out at the Appellant. Examiner has meet the burden of 35 U.S.C. 132 in that the claims being rejected were clearly identified, the Law on which the rejection was established was clearly identified, and the reference relied upon was clearly identified. For those limitations that didn't jump off the pages

of the reference (ie., figure 8 of Kracht with respect to the Appellant's 21 claim), examiner provided a mapping of claimed limitations with sections of the reference.

2. The claims are not anticipated under 35 U.S.C. 102 by examiner's "rare finding". However, the claims were not rejected under 35 U.S.C. 102. Examiner was stating the general art of Network Discovery. Basically when a system tried to discover what device was located at a specific address, the system would communicate to that address using several different protocols. Even Kracht suggested such in col. 10 (lines 1-16) by the words "retrieving additional proprietary discovery information". Without introducing a new grounds of rejection, Examiner provides support of the general art of Network Discovery. This is not a rejection:

a) Google (McCollum) taught the use of a port scanner. A port scanner beings with a specific internet address location and attempts to open a connection to each port. Each port is assigned to a specific operation (ie., ftp, telnet, mail, web, exc...) and thus each use a different protocols (ftp is different the http (web)). Thus to determine what device is located at a specific location, a port strobe will scan the device for all known protocols, those that are discovered are recorded. Each

knock on each port is a different command;

b) SATAN is another port scanner that performs a more detailed discovery method. SATAN is notoriously well known to be used by hackers to discover as much detailed information as possible about a given device at a specific location;

c) Tonelli et al. (5,821,937) details the use of multiple protocols to determine device types (see col. 19 (line 9-et seq).

3. Again, examiner is not introducing any new grounds of rejection by is simply providing support as challenged by the Appellant.

4. For all or the reasons set forth supra, it is respectfully requested that the rejections as presented be sustained.

XII. Period for Response to New Ground of Rejection.

No extension of time is permitted for filing a Reply Brief under 37 C.F.R. 1.136(a).

ROBERT B. HARRELL
PRIMARY EXAMINER

Appeal Conferee are indicated in the Search Notes of the file.

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